United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 CR 691	DATE	2/25/2008
CASE TITLE	USA vs. Antoin Rezko		

DOCKET ENTRY TEXT

The Government's Motion for Admission of Other Acts Evidence [252] is granted in part and denied in part.

■[For further details see text below.] Notices mailed by Judicial staff.

STATEMENT

The trial of Defendant Antoin Rezko commences on March 3, 2008. The government has moved to introduce "intricately related" acts and "other act" evidence under Fed. R. Evid. 404(b) ("Rule 404(b)") at trial. In particular, the government seeks to introduce evidence of the following alleged "acts:" 1) evidence regarding the first time Defendant Rezko and co-schemer Stuart Levine (who has pled guilty and is cooperating with the government) met; 2) evidence regarding the Chicago Medical School's acquisition of the Dr. William M. Scholl School of Podiatric Medicine; 3) evidence that Defendant Rezko offered to have Phil Caccitore placed on the Illinois Banking Board in exchange for a $50,000 contribution to Governor Blagojevich; 4) evidence that Rezko used Joseph Aramanda to move money on Rezko's behalf; 5) evidence that Rezko used others to make political contributions; 6) evidence that Defendant used his influence to have certain individuals appointed to the Illinois Finance Authority for Rezko's own benefit; and 7) evidence regarding an offer Defendant Rezko allegedly made to Charles Hannon and Fortunee Massuda. For the reasons stated in detail below, the Court grants the government's motion in part and denies it in part.

BACKGROUND

On October 5, 2006, a grand jury returned a Superseding Indictment (the "Indictment") against Defendant Rezko and co-schemer Levine. (R. 96-1, Superseding Indictment.) The Indictment charges that Defendant Rezko committed the following offenses: 1) mail or wire fraud, in violation of 18 U.S.C. §§ 1341, 1343, including the deprivation of the intangible right to honest services, in violation of 18 U.S.C. § 1346; 2) attempted extortion, in violation of 18 U.S.C. § 1951; 3) aiding and abetting Stuart Levine's bribery concerning a federally funded program, in violation of 18 U.S.C. § 666; and 4) money laundering, in violation of 18 U.S.C. § 1956.

The charges arise out of an alleged scheme to defraud the beneficiaries of the Teacher's Retirement System of the State of Illinois ("TRS") and the people of the State of Illinois of the honest services of Stuart

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Levine as a board member of TRS and the Illinois Health Facilities Planning Board. The Indictment alleges that Levine owed a duty of honest services by virtue of being a member of 1) the TRS Board of Trustees (which reviewed proposals by private investment management companies to manage funds on behalf of the TRS public pension plan), and 2) the Illinois Health Facilities Planning Board (which reviewed bids to build new hospitals). (R. 96-1, Indictment ¶¶ 1-14.) It further charges that Defendant Rezko "used his relationship with certain State of Illinois officials, to ensure that Rezko and Levine had the ability to influence the actions of TRS and the [Illinois Health Facilities] Planning Board for the benefit of themselves and their nominees and associates." (*Id.* ¶ 3a.) It also charges that Rezko and Levine used Levine's position on the TRS Board and the Illinois Health Facilities Planning Board to carry out this alleged scheme.

LEGAL STANDARD

"Generally, evidence of other bad acts is not admissible to show a defendant's propensity to commit a crime, nor to show that he or she acted in conformity with that propensity on the occasion in question." *United States v. James*, 464 F.3d 699, 709 (7th Cir. 2006); Fed. R. Evid. 404(b) ("[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith"). Rule 404(b) "forbids the use of evidence of a defendant's history of illegal or unethical acts to prove that he is a person of bad character and likely therefore to have committed the crime of which he is accused in the present case, or perhaps some other, undetected crime for which he should be punished." *United States v. Paladino*, 401 F.3d 471, 474-75 (7th Cir. 2005). "[E]vidence may, however, be admitted under Rule 404(b) to establish proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *James*, 464 F.3d at 709. *See also United States v. Leahy*, 464 F.3d 773, 797 (7th Cir. 2006). In determining whether evidence is admissible pursuant to 404(b), the Seventh Circuit has adopted a four-part standard, assessing whether:

> (1) the evidence is directed toward establishing a matter in issue other than the defendant's propensity to commit the crime charged, (2) the evidence shows that the other act is similar enough and close enough in time to be relevant to the matter in issue, (3) the evidence is sufficient to support a jury finding that the defendant committed the similar act, and (4) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

United States v. Kreiser, 15 F.3d 635, 640 (7th Cir. 1994); *Leahy*, 464 F.3d at 797. *See also United States v. Ross*, 510 F.3d 702, 713 (7th Cir. 2007).

Further, "[i]f the evidence of other crimes or bad acts provides direct or inextricably intertwined evidence (often referred to as intricately related evidence) of the acts charged, it is not subject to the constraints of Rule 404(b)." *James*, 464 F.3d at 709; *United States v. Lane*, 323 F.3d 568, 579 (7th Cir. 2003) ("[C]ases applying the 'intricately related' doctrine have recognized that evidence concerning the chronological unfolding of events that led to an indictment, or other circumstances surrounding the crime, is not evidence of 'other acts' within the meaning of Rule 404(b)."). "Under the 'intricately related evidence' doctrine, the admissibility of uncharged conduct turns on whether the evidence is properly admitted to provide the jury with a complete story of the crime on trial, whether its absence would create a chronological or conceptual void in the story of the crime, or whether it is so blended or connected that it incidentally involves, explains the circumstances surrounding, or tends to prove any element of the charged crime." *James*, 464 F.3d at 709. "Although inextricably related evidence does not have to satisfy 404(b), it still must satisfy the balancing test of Rule 403." *Lane*, 323 F.3d at 579; *United States v. Hale*, 448 F.3d 971, 985 (7th Cir. 2006).

Furthermore, mail and wire fraud are specific intent crimes. *See United States v. Warner*, 498 F.3d

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666, 691 (7th Cir. 2007) (mail fraud is a specific intent crime); *United States v. Leahy*, 464 F.3d 773, 786 (7th Cir. 2006) (mail and wire fraud are specific intent crimes). Given that the government must prove Defendant's intent, Rule 404(b) evidence is a proper vehicle to do so where all of the Rule's mandates are met. *See United States v. Vaughn*, 267 F.3d 653, 659 (7th Cir. 2001) ("We have repeatedly held that it is proper to use other acts evidence to establish intent where the defendant is charged with a specific intent crime").

With these principles in mind, the Court will address each category of evidence the government seeks to introduce pursuant to Rule 404(b) or as "intricately related" evidence.

ANALYSIS

I. The Levine/Rezko Relationship

The government seeks to admit evidence of the history of Defendant Rezko's and Stuart Levine's relationship, including evidence regarding the first time they met on November 2, 2002 at a dinner party. Defendant does not object to the admission of evidence that Rezko met Levine at this dinner party, hosted by Fortunee Massuda and Charles Hannon. Nor does Defendant object to the admission of evidence that Rezko and Levine discussed certain common acquaintances, including Robert Kjellander and William Cellini, at that dinner. Accordingly, this aspect of the government's motion is granted.

II. The Scholl Property

Defendant Rezko does object, however, to the admission of evidence regarding an alleged discussion between Rezko and Levine at that dinner party regarding a property acquisition. He also contests the government's characterization that this discussion marked the beginning of their corrupt relationship.

Specifically, the government seeks to admit evidence that at the dinner party where Rezko and Levine first met, Levine was on the board of the Chicago Medical School ("CMS"), a private medical school. CMS was in the process of acquiring the Dr. William M. Scholl School of Podiatric Medicine (the "Podiatry School"). The Podiatry School owned what was potentially a very valuable piece of real estate at 1001 North Dearborn in Chicago (the "Scholl Property"). Because of his role on the CMS Board, Levine had a significant amount of control over the disposition of the Scholl Property if CMS acquired it. As of November 2, 2002, however, the government asserts that an issue had arisen which threatened CMS's acquisition of the Podiatry School and thus the Scholl Property.

According to the government, the members of the dinner party – including Rezko and Levine – discussed the sale of the Podiatry School and the Scholl Property. Massuda, who operated a podiatry clinic operating in a building on the Scholl Property, allegedly told Levine that she would love to purchase the building on the Scholl Property. In response, Levine asked Massuda if she was aware of the problem CMS was having with the acquisition. Although Massuda said "no," Rezko allegedly said "yes." Because of the manner in which Rezko responded, Levine allegedly asked Rezko if he meant that CMS's problem with the acquisition would disappear if CMS agreed to sell the building to Massuda. Although Massuda said "no," Rezko allegedly said "yes" and told Massuda that they might as well be straightforward about what they were doing. Rezko – who had served as a trustee of the Scholl School until July 2001 – thereafter purportedly indicated that if Levine promised to sell the building to someone else, then the problem with the acquisition would go away. Levine then told Rezko that he had an understanding about the building with another developer. Rezko allegedly responded that the problem with the acquisition would disappear by the following Tuesday morning.

After the dinner party, Levine will testify that he called William Cellini and informed him of his conversation with Rezko about the Scholl Building. Cellini said that he knew Rezko well and that Rezko was a good guy. He added that if Rezko said that the problem would go away, then it would go away. By

the following Tuesday, the problem with CMS's acquisition of the Scholl Property was gone and CMS acquired it.

Defendant argues that this characterization of the evidence is simply wrong and complains that the government has not suggested the nature of the supposed "problem" with CMS's acquisition. According to Defendant Rezko, CMS's counsel has reported that he is not aware of any problem with the acquisition in November 2002. Defendant further claims that the evidence demonstrates that CMS's acquisition of the Scholl Property was completed in 2001 – over a year before the dinner party where Levine and Rezko met – and that the CMS Board was actually considering offers to *sell* the Scholl Property throughout 2002. Even Levine, according to Rezko, admitted in his grand jury testimony that he was trying to locate a buyer for the Scholl Property in August of 2002 who would pay him a kickback. In other words, Defendant contends that the event as described by the government never occurred.

In response, the government has proffered that documents from CMS demonstrate that 1) there was a second closing on the merger of the Scholl School and CMS contemplated at the end of 2002; 2) on November 14, 2002, Levine reported to the CMS Board that the delay in the second closing caused by the Scholl School's ostensible failure to receive a consulting report had been resolved; and 3) the second closing actually took place on December 2, 2002. This evidence is sufficient to raise an issue of fact for the jury. Furthermore, the Court grants the government's motion to admit this evidence surrounding the purported beginning of Defendant's and Levine's corrupt relationship because it helps explain the relationship between Levine and Rezko, including the trust in their relationship from its inception. As such, it is inextricably intertwined with the charged conduct, and necessary to avoid a void in the unfolding of their allegedly corrupt relationship. *See United States v. McLee*, 436 F.3d 751, 760 (7th Cir. 2006) (evidence admissible to show "the genesis and nature" of relationship); *United States v. Spaeni*, 60 F.3d 313, 316 (7th Cir. 1995) (evidence inextricably intertwined where it shows "how the relationship of trust and cooperation developed" between defendant and co-conspirators). *See also United States v. Senffner*, 280 F.3d 755, 764 (7th Cir. 2002) ("Acts satisfy the inextricably intertwined doctrine if they complete the story of the crime on trial; their absence would create a chronological or conceptual void in the story of the crime; or they are so blended or connected that they incidentally involve, explain the circumstances surrounding, or tend to prove any element of, the charged crime."). Defendant is free to cross examine Levine (and any other witnesses) with the evidence he has noted.

III. Rezko's Offer to Have Phil Caccitore Placed on a State Board in Exchange for a $50,000 Contribution

The government next seeks to introduce evidence that Rezko allegedly sought a $50,000 political contribution for Governor Blagojevich as a prerequisite for Rezko using his clout to have Phil Cacciatore appointed to the Illinois Banking Board. Joseph Cacciatore – Phil Cacciatore's brother and a member of the Illinois State Board of Investment – allegedly approached Rezko about the appointment for Phil. Rezko responded that a $50,000 contribution to Governor Blagojevich would help his brother's chances of the board appointment. Rezko and Joseph Cacciatore allegedly agreed that Joseph Cacciatore would contribute $25,000 to the campaign and Rezmar – one of Rezko's companies – would contribute the other $25,000 on behalf of Cacciatore. In approximately February 2004, Rezko recommended Phil Cacciatore for the Illinois Banking Board, and he was thereafter appointed to the Board.

The government argues that the Court should admit this evidence pursuant to Rule 404(b) because it demonstrates Rezko's intent, knowledge, identity, opportunity, lack of mistake and motive regarding the charged scheme. The Court agrees. The Indictment charges Defendant with, in furtherance of the charged

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scheme, agreeing with Levine to extort Thomas Rosenberg – a principal of Capri Capital. (R. 96-1, Indictment ¶ 10.) In early 2004, the staff of the TRS Board had recommended that the Board allocate available funds for real estate investments among the existing TRS real estate managers, including a $220 million investment with Capri Capital. Through Levine's arrangement, the TRS Board postponed the allocation to Capri Capital. Levine and Rezko allegedly then agreed to approach Rosenberg through an intermediary to either make a $1.5 million donation to Governor Blagojevich or pay Levine an approximate $2 million fee in order to obtain the $220 allocation. In approximately May 2004, that intermediary approached Rosenberg and informed him of Levine and Rezko's demand. Rosenberg responded that he would not be extorted, and he thereafter threatened to inform law enforcement. Given the threat, Levine and others agreed that Capri Capital would receive the $220 million without any fees or political donations, but it would not receive any further business from the State of Illinois, including TRS. The TRS Board subsequently approved the $220 allocation to Capri Capital.

Given the charge related to Capri Capital, the proffered evidence of Rezko extracting a contribution from Cacciatore satisfies each element of the Rule 404(b) test. First, evidence of Rezko allegedly seeking and obtaining a large political contribution for Governor Blagojevich as a prerequisite for Rezko using his clout to influence a state decision is directly relevant to show Rezko's intent and knowledge of the scheme, and lack of mistake. *United States v. Ross*, 510 F.3d 702, 713 (7th Cir. 2007) (evidence admissible to show intent where intent at issue); *United States v. Mallett*, 496 F.3d 798, 802 (7th Cir. 2007) (same). This is especially true given Defendant Rezko's clear intention to attack co-schemer Stuart Levine and blame the charged scheme solely on Levine. (*See, e.g.*, R. 258-1, Def.'s Resp. to *Santiago* Proffer at 7 ("The scheme alleged in this case is the figment of the imagination of one witness – Stuart Levine . . . . only Levine will testify that the alleged scheme existed."), 8 ("[t]here is, to say the least, significant cause to doubt the credibility of Levine's testimony").) Given that Levine allegedly was not involved in the Cacciatore incident, this evidence goes directly to, and is highly probative of, Rezko's intent. It is further relevant to the government's argument that Rezko was not fooled or mistaken in understanding Levine's actions regarding Rosenberg. *See United States v. James*, 487 F.3d 518, 525-26 (7th Cir. 2007); *United States v. Ryan*, 213 F.3d 347, 350 (7th Cir. 2000). In other words, the government is not submitting this evidence as propensity evidence. Second, the Cacciatore incident is during the time frame of the charged scheme. Third, the testimony and documentary evidence are sufficient to support a jury finding that the defendant committed the similar act. Finally, the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. Accordingly, the government's motion to admit the Cacciatore incident pursuant to Rule 404(b) is granted.

Defendant argues that the government's version of the events is based on Dan Mahru, a cooperating witness, and that Mahru is lying. Defendant attaches an affidavit of Joe Cacciatore denying Mahru's version. The Seventh Circuit has made clear, however, that attacking the credibility of a witness alone is not sufficient to preclude the admission of Rule 404(b) evidence.
See United States v. Green, 258 F.3d 683, 694 (7th Cir. 2001), citing *United States v. Smith*, 995 F.2d 662, 672 (7th Cir. 1993) ("uncorroborated direct testimony of an accomplice is sufficient for purposes of Rule 404(b) unless it is 'incredible on its face or otherwise insubstantial'"). The credibility of Mahru is properly left to the province of the jury. Defendant will have ample opportunity to thoroughly cross examine Mahru.

IV. Rezko's Use of Joseph Aramanda As a Vehicle to Move Money

The government next seeks to introduce evidence regarding Joseph Aramanda's movement of money on behalf of Rezko allegedly in order to conceal Rezko's involvement in the scheme. The Indictment

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charges that in the Spring of 2003, Shelly Pekin was seeking TRS funds on behalf of Glencoe Capital. (R. 96-1, Indictment ¶ 6.) Stuart Levine allegedly told Pekin that Pekin would have to split his finder's fee from the Glencoe investment with a third party designated by Rezko, even though that third party would not perform any work in return for the fee. In August 2003, the TRS Board approved $50 million in two investment funds operated by Glencoe, and Pekin received $375,000 for acting as a consultant to Glencoe Capital in connection with TRS. (*Id.*)

A. The $375,000 Finder's Fee

Glencoe Capital paid a $375,000 fee to Sheldon Pekin for the TRS investment in Glencoe Capital. (*Id.*) The government argues that through Levine, Rezko directed a portion of that finder's fee to Aramanda, his business associate, and then directed Aramanda to provide the money to others. The government claims that it needs to prove that Rezko was aware of (and in fact behind) the movement from Aramanda to others, and that the movement did not happen by mistake. The Court agrees that the government can introduce evidence regarding Aramanda's receipt of money from the $375,000 finder's fee, and Aramanda's use of this money in order to demonstrate that Rezko was allegedly behind the transactions. This tracing of the $375,00 finder's fee is part of the charged scheme and integral to the indictment.

B. The Kjellander-Aramanda Transaction

The government argues that it should be permitted to introduce evidence of another series of movements of money by Rezko through Aramanda approximately six months before the Glencoe Capital payment. It further argues that this evidence is "highly probative of Rezko's strained financial situation and therefore of his motive to engage in the charged fraud scheme." (R. 252-1, Motion for Admission of Other Acts, at 8.) As part of this, the government sets out an approximate $809,000 money transfer from Bear Stearns that Rezko purportedly directed to Robert Kjellander who, in turn, transferred $600,000 of the funds to Aramanda. The government argues that Aramanda thereafter paid out approximately $450,000 to four separate Rezko assignees, and sets forth elaborate evidence as to why each of the recipients was a Rezko assignee.

Defendant argues that this evidence "is a needless and lengthy detour that will result in a mini-trial of Rezko's relationship with four individuals who otherwise have nothing to do with this case and would otherwise not testify, as well as an airing of the entirety of Aramanda's finances." (R, 323-1, Resp. To Motion for Admission of Other Acts, at 13.) The Court agrees. Any probative value from this complex proof is substantially outweighed by the danger that it will confuse or mislead the jury and cause undue delay at trial. *See Senffner*, 280 F.3d at 764. Accordingly, the government's motion is denied as to Aramanda's transaction with Kjellander.

V. Use of Other Individuals to Make Political Contributions

The government has moved to admit evidence that Rezko used other individuals to make political contributions. As noted above, Glencoe Capital paid a $375,000 fee to Sheldon Pekin for the TRS investment in Glencoe. A chunk of that fee went to Aramanda, and Rezko allegedly directed Aramanda to provide the money to others. The government contends that Aramanda used some of it – at Rezko's direction – to make a political contribution because Rezko had already donated the maximum amount allowed by law and he could not make the contribution himself. In order to establish Rezko's identity as the person behind this payment and to establish his knowledge of the contribution and control over the money, the government seeks to introduce evidence that just months before Rezko directed Aramanda to make the political

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contribution, Rezko directed Elie Maloof to donate for the same reason.

This evidence is admissible pursuant to Rule 404(b) because it is evidence of Rezko's identity as the person behind the payment from the charged conduct, and it is relevant to his knowledge of, and control over, the payment from the charged Glencoe Capital finder's fee. Defendant's attack on the credibility of the witnesses who will testify regarding it is an issue for the jury. *See Green*, 258 F.3d at 694. It is also close in time, the testimony and documentary evidence as proffered by the government are sufficient to support a jury finding regarding it, and its probative value is not substantially outweighed by the danger of unfair prejudice. It is also direct evidence of the allegation in the Indictment that "Rezko raised significant amounts of money for certain Illinois politicians." (R. 96-1, Indictment ¶ 1i).

In addition, Rezko allegedly previously directed Aramanda and Maloof to make other political contributions. For the same reasons, this evidence is admissible.

VI. Use of the Illinois Finance Authority

The government next seeks to introduce evidence to demonstrate that Defendant Rezko used his influence to have certain individuals appointed to the Illinois Finance Authority ("IFA") for his own benefit. The government argues that this evidence is highly probative of Defendant's knowledge, intent, identity, opportunity, lack of mistake and modus operandi with respect to the charged scheme.

As part of the charged scheme, the Indictment charges that Defendant Rezko used his influence with the State of Illinois administration to have Levine reappointed to the TRS Board and to have additional individuals appointed to the TRS Board who would cooperate with Rezko and Levine. (R. 96-1, Indictment ¶ 4.) In approximately May 2004, the Indictment charges that Rezko instructed the State of Illinois employee who was responsible for facilitating appointments to state boards to move forward on Levine's reappointment to the TRS Board, and represented that Lon Monk had approved the reappointment. According to the government, the evidence will show that Monk subsequently directed that Levine be reappointed to the TRS Board, and he received the reappointment. In addition, two members were appointed to the TRS Board who voted with Levine on matters of interest to Rezko and Levine. (*Id.*, ¶ 4.) Rezko, according to the Indictment, benefitted from placing Levine on the TRS Board.

Similarly, the Indictment alleges that Rezko used his influence with State of Illinois officials to ensure that Levine was on the Illinois Health Facilities Planning Board ("IHFPB"). The government contends that the evidence will show that Rezko was the individual responsible for selecting five individuals, including Levine, to be appointed to the IHFPB so he could control the IHFPB. According to the government, the evidence will demonstrate that Rezko discussed the makeup of the IHFPB with Thomas Beck, the Chairman of the Planning Board, who subsequently told Levine that the IHFPB had five members who were "Rezko's people." The Indictment charges that Rezko then used Levine's position and influence for Rezko's personal benefit.

In order to establish Rezko's lack of mistake, knowledge and intent, the government contends that Rezko used his influence to have Ali Ata appointed as Executive Director of the IFA, and then used Ata's position as the Executive Director in order to benefit himself. The government asserts that after Rezko had Ata appointed to the IFA, he requested that Ata write a letter from the IFA falsely stating that the IFA was going to guarantee half of the $16 million refinancing that was being sought. Rezko faxed the false letter to the lender. The government argues that this is evidence of Rezko's knowledge, intent, identity, opportunity, lack of mistake and modus operandi with respect to the charged scheme because the government intends to prove that Rezko used his influence with the administration to put Levine on both the TRS Board and the Illinois Health Facilities Planning Board.

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This evidence is admissible under Rule 404(b). First, as noted above, Defendant has made clear that he intends to argue that the evidence shows that Stuart Levine is the only one responsible for the charged fraud. This evidence regarding the IFA – a board in which Stuart Levine was not associated – is evidence of Rezko's knowledge and intent to carry out the charged fraud scheme. It is further evidence to support the government's argument that Rezko was not duped or mistaken in his understanding with respect to what Levine was doing in his capacity as a board member on TRS an the IHFPB. *See United States v. Best*, 250 F.3d 1084 (7th Cir. 2001) (Rule 404(b) evidence admissible to show knowledge and lack of mistake). Second, this event took place in early to mid 2004 – during the heart of the charged scheme. Third, the testimony and documentary evidence as proffered by the government are sufficient to support a jury finding that the defendant committed the similar act. Finally, the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. Accordingly, the government's motion to admit this evidence pursuant to Rule 404(b) is granted.

VII. Hannon and Massuda Offer

Finally, the government seeks to admit evidence that Defendant Rezko allegedly offered to use his influence to have Charles Hannon and Fortunee Massuda act to obtain contracts with the State of Illinois or to earn a fee as "consultants" on the placement of such contracts. The government asserts that this evidence is inextricably intertwined with a series of conversations between Defendant Rezko and Hannon/Massuda that it intends to introduce as direct evidence of the charged scheme. The Court agrees.

The Indictment charges that JER submitted an application to receive funds from TRS. After the application, Levine and Joseph Cari attempted to coerce JER to hire a consultant who would receive a finder's fee from JER. (R. 96-1, Indictment ¶ 7.) Defendant and Levine allegedly agreed that they would share the finder's fee, and Rezko directed that alleged co-schemer Charles Hannon receive his portion of the finder's fee. Rezko's wife allegedly owed Hannon a substantial amount of money. (*Id.*)

It further charges that JER agreed to hire a consultant chosen by Levine in exchange for Levine's assistance in getting the TRS funds. Rezko allegedly agreed to provide Levine with the name of a person who would receive the consulting fee on behalf of them. In approximately April 2004, Rezko allegedly gave Hannon's name as the person who would receive the consulting fee from JER, even though Hannon would not perform any work for the fee. JER did not seek the services of Hannon or use Hannon in its application to receive TRS funds. Nor did Hannon or his company provide any services to JER.

In May 2004, Cari contacted JER and informed its president that JER had to execute a consulting agreement with Hannon or it would lose the TRS investment. On May 20, 2004, Cari spoke with two attorneys who represented JER and said that if JER did not sign the contract with Hannon, it would be taken off the TRS May agenda. That same day, law enforcement approached Levine, and the JER application went through without Levine interfering with it.

The evidence of Defendant's prior overtures to Hannon and Massuda is relevant to understand the context in which the charged actions allegedly took place and to explain the relationship between Defendant Rezko and Hannon/Massuda. Defendant had phone calls with both Hannon and Massuda where he offered to have the money they earned through the state consulting work delay Rezko having to pay back the debts he owed them. Hannon also understood that Rezko wanted the payments to offset the debts Rezko owed them. Because they were concerned about the nature of the proposal, Hannon and Massuda declined the offer. Subsequent to these discussions, Levine contacted Hannon regarding the finder's fee through JER as charged in the Indictment. Levine and Hannon, and Hannon and Rezko allegedly had additional conversations regarding the signing of the "consulting" contract with JER. At the end of a May 11, 2004 conversation

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between Hannon and Levine, Hannon told Levine that "Tony wants, Fortunee doesn't know anything about this." The government intends to prove that this "was a reference to the decision that Hannon and Rezko had made to keep from Massuda the fact that Hannon was working with Rezko and Levine on the JER finder's fees" because Massuda had rejected the prior arrangement and this transaction was similar.

This evidence is inextricably intertwined with the charged transaction regarding the finder's fee from JER as it is the beginning of the conversation that led to the alleged conduct in the Indictment. It also explains Rezko's relationship with Hannon and Massuda and puts that relationship in context. It explains why Rezko would allegedly direct part of the "consultant fee" from JER to them. *See McLee,* 436 F.3d at 760 (evidence the admissible to explain relationship of parties.); *Senffner*, 280 F.3d at 763-64. As such, it is admissible independent of Rule 404(b)

For the reasons discussed above, Defendant's attack on Hannon's credibility does not provide a sufficient basis to preclude the admission of this testimony. Defendant is free to cross examine Hannon, including on issues of memory loss.

VIII. Jury Instructions

Finally, the Court will appropriately instruct the jury regarding evidence admitted pursuant to Rule 404(b). *See United States v. James*, 464 F.3d 699, 711 (7th Cir. 2006). *See also United States v. Dennis*, 497 F.3d 765, 768-69 (7th Cir. 2007). The instructions will also address Defendant's remote concerns regarding potential prejudice. *United States. v. Kuzlik*, 468 F.3d 972 (7th Cir. 2006) (instructions cured any potential prejudice from Rule 404(b) evidence). As the Seventh Circuit has made clear, it is assumed that juries follow a court's instructions. *James*, 464 F.3d at 711. Defendant is free to provide the Court with proposed limiting instruction to give the jury during the trial regarding the Rule 404(b) evidence on or before February 29, 2008.

CONCLUSION

The government's Rule 404(b) motion is granted in part and denied in part.